IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1773 OF 2007

Balkrishna Namdeo Katkade ..Petitioner.

V/s.

State of Maharashtra & Ors. ..Respondents.

Mr.Bhavesh Parmar for the petitioner.

Mr.G.S.Hegde i/b. M/s.Hegde & Ass. for respondents 2 & 3.

Mr.D..Nalawade, G.P. For the State-respondent No.1.

CORAM : SWATANTER KUMAR, C.J. &
J.P. DEVADHAR, J.

DATED: 19TH NOVEMBER, 2007.

P.C.: -

Challenge in this Writ Petition under Article 226 of the Constitution of India is to the order dated 11th May, 2007 passed by the Divisional Controller, Maharashtra Road Transport Corporation, Mumbai requiring the petitioner to pay Rs.12,269/- per month as the amount of licence fees payable with effect from

28/4/2006.

2. The correctness of this order is questioned on the ground that firstly, no order can be passed retrospectively in spite of the fact that earlier the petitioner's request was allowed and he was permitted to stay in the premises allotted to him on certain terms and conditions. Secondly, the order is violative of principles of natural justice inasmuch as, the petitioner was not given any show cause notice or any notice of hearing before passing of the impugned order.

3. Appropos the order in question, the petitioner has to pay for the use and occupation of the premises. It is not in dispute before us that earlier the petitioner was granted permission to occupy the premises. The said permission was allowed to be extended. However, vide letter dated 7th August, 2006 the request for further extention was rejected. The petitioner at no point of time was given any notice of the proceeding of the impugned order. Furthermore, the petitioner was also not called upon to rectify. According to the learned counsel for the respondents, once permission was declined, it was expected of the petitioner to

vacate the premises failing which he was liable to pay market rate as demanded in order dated 11th May, 2007, no notice for future rent was required to be granted.

4. We find some merit in the contention raised on behalf of the respondent. However, the said order is bad for non compliance of the principles of natural justice. It was expected of the respondents that before passing the penal order, which was retrospective and required the petitioner to pay Rs.12,269/- per month from the date much prior to the passing of the order i.e. 11th May, 2007, the petitioner should have been granted time to justify his stand or reason to show that he was liable to pay the penal rent as per the claim of the respondents.

5. Furthermore, we may also note that according to the petitioner the dues sought to be enforced is not against the petitioner alone. The action of the respondent is discriminatory inasmuch as number of other employees or collegues of the petitioner have been permitted to continue and occupy the service quarters in Mumbai upon their transfers outside Mumbai. The action as stated above by itself is violative of Article 14 of the

Constitution of India. Be that as it may in these circumstances, we dispose of the petition with directions that the respondent in the present Writ Petition shall serve a notice upon the petitioner in respect of the penal rent with retrospective effect from 28/4/2006 till the passing of the order on 11th May, 2007 is concerned. The petitioner may file a reply to such notice and the respondents to take a decision as expeditiously as possible and at any rate not later than 8 weeks from the date of passing this order.

As regards the contention that the order is discriminatory as well as the contentions regarding the rule under which the penal rent is calculated, we grant liberty to the petitioner to approach before the revisional authority within one week from today which thereupon shall be decided by the respondents in the same manner as mentioned above.

6. Writ petition is disposed of in the above terms.

CHIEF JUSTICE

J.P. DEVADHAR, J.